

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL J. WIK,

Plaintiff,

DECISION AND ORDER

v.

11-CV-6205 CJS

DONALD R. KUNEGO, in his personal and
individual capacity,

Defendant.



1. This action was referred to the Court's Alternative Dispute Resolution ("ADR") program by Order filed August 14, 2012, pursuant to ADR Plan Section 2.1 B. By Notice of Motion (erroneously entitled "Notice of Motion for Summary Judgment") filed September 13, 2012, the defendant has moved to opt out of ADR. The motion is supported by the Affirmation of Robert H. Flynn, Esq. an attorney affiliated with the law firm representing defendant. The Court finds it unnecessary to invite a submission from plaintiff or to schedule argument.

2. Section 2.2 C of the ADR Plan for the Western District of New York requires that a party seeking relief from mediation show good cause for the request by stating the reasons why mediation has no reasonable chance of being productive.

3. Section 2.2 A of the Plan requires that a motion to opt out must be made within fourteen (14) days from the date of a *sua sponte* order of referral to ADR in a pending case.


4. In presenting defendant's argument that good cause can be shown for the granting

of this motion, the aforesaid affirmation of attorney Flynn asserts that plaintiff's claims, among other defects, are not actionable, are frivolous and are motivated by a desire to harass and annoy defendant Kunego, a town justice. Defendant further contends that this case is factually intertwined with a separate case recently dismissed by this Court on the basis of absolute judicial immunity. (Wik vs. Robert G. Swapceinski, 11-CV-6220). A motion for summary judgment by defendant Kunego based upon that same ground has been filed in this case and is pending.

5. Notwithstanding the merits of defendant's instant motion to opt out, the Court finds that the mandatory time limit recited in ADR Plan Section 2.2 A for filing same has not been met, that defendant has presented no reasonable excuse for that failure even if excuse could be considered, and that the motion is untimely.

6. For the reason stated above, the motion to opt out is DENIED.

IT IS SO ORDERED.



CHARLES J. SIRAGUSA
United States District Judge

Dated: Rochester, New York
September 24, 2012